

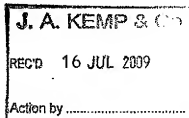


Europäisches
Patentamt
European
Patent Office
Office européen
des brevets

European Patent Office
Pöschels 5016
2280 HV Rijswijk
NETHERLANDS
Tel: +31 70 340 2040
Fax: +31 70 340 3016



Woods, Geoffrey Corlett
J.A. KEMP & CO.
14 South Square
Gray's Inn
London
WC1R 5JJ
ROYAUME-UNI



Formalities Officer
Name: Kainda, Louis
Tel: +31 70 340 - 0
or call
+31 (0)70 340 45 00

Substantive Examiner
Name: Möhrs, Sascha
Tel: +31 70 340 - 4535

Application No. 03 788 512.6 - 1265	Ref. N.96071 GCW/DF	Date 14.07.2009
Applicant Pacific Edge Biotechnology Limited		

Communication pursuant to Article 94(3) EPC

The examination of the above-identified application has revealed that it does not meet the requirements of the European Patent Convention for the reasons enclosed herewith. If the deficiencies indicated are not rectified the application may be refused pursuant to Article 97(2) EPC.

You are invited to file your observations and insofar as the deficiencies are such as to be rectifiable, to correct the indicated deficiencies within a period

of 4 months

from the notification of this communication, this period being computed in accordance with Rules 126(2) and 131(2) and (4) EPC. One set of amendments to the description, claims and drawings is to be filed within the said period on separate sheets (R. 50(1) EPC).

Failure to comply with this invitation in due time will result in the application being deemed to be withdrawn (Art. 94(4) EPC).



Möhrs, Sascha
Primary Examiner
For the Examining Division

Enclosure(s): 4 page/s reasons (Form 2906)

The examination is being carried out on the following application documents:

Description, Pages

1-23 as originally filed

Claims, Numbers

1-7 as originally filed

Drawings, Sheets

1/7-7/7 as originally filed

- 1) Reference is made to the following documents; the numbering will be adhered to in the rest of the procedure:

D1: WO 02/47007 A (PHASE IT INTELLIGENT SOLUTIONS [DE]; EILS ROLAND [DE]) 13 June 2002 (2002-06-13)

D2: KASABOV N K ET AL: "DENFIS: dynamic evolving neural-fuzzy inference system and its application for time-series prediction" IEEE TRANSACTIONS ON FUZZY SYSTEMS IEEE USA, vol. 10, no. 2, April 2002 (2002-04), pages 144-154, XP002516617 ISSN: 1063-6706

D3: WO 02/059822 A (BIOWULF TECHNOLOGIES LLC [US]; GUYON ISABELLE [US]; WESTON JASON [GB]) 1 August 2002 (2002-08-01)

D4: WO 01/78003 A (UNIV OTAGO [NZ]; KASABOV NIKOLA KIRILOV [NZ]) 18 October 2001 (2001-10-18)

- 2) The application does not meet the requirements of **Article 84 EPC**, because claims 1, 3, 5, 7 have been drafted as separate independent claims. Under **Article 84 EPC** in combination with **Rule 43(2) EPC**, an application may contain more than one independent claim in a particular category only if the subject-matter claimed falls within one or more of the exceptional situations set out in **paragraph (a), (b) or (c) of Rule 43(2) EPC**. However, this is not the case in the present application:

Claims 1 and 5 define similar systems to support a medical decision.

Claims 3 and 7 define similar methods to extract information from genes and clinical data.

- 2.1) Moreover, claim 7 contains references to the description, which is not allowed according to **Rule 43(6) EPC**.
- 3) Notwithstanding the above-mentioned lack of clarity, the subject-matter of the independent claims 1, 3, 5, and 7 is not new within the meaning of **Article 54(1) and (2) EPC**, and therefore the requirements of **Article 52(1) EPC** are not met.
- 3.1) Document *D1* discloses *(the references in parentheses applying to this document)*:

A medical decision support system (*page 1, paragraphs 1 and 2*), comprising:
a processor (*claim 10, taking into consideration that a computer system inherently comprises a processor*);
a memory device (*claim 10, taking into consideration that a computer system inherently comprises a memory device*);
an input for acquiring gene expression data, said input associated with a first classifier/predictor module (*page 12, paragraphs 1 and 2*);
an input for acquiring clinical information, said input associated with a second classifier/predictor module (*page 3, paragraphs 3 and 4*); and
a program available to said processor comprising a combination algorithm (*page 3, paragraph 5 - page 4, paragraph 4*).

The subject-matter of claim 1 is therefore not new (**Article 54(1) and (2) EPC**).

- 3.2) Document *D1* discloses *(the references in parentheses applying to this document)*:

A method for support a medical decision on a computer system (*page 3, paragraph 3*), comprising the steps of:
a) classifying genetic expression information using a first classifier/predictor module to provide classified gene expression information (*page 35, paragraph 3*);
b) classifying clinical information into a second classifier/predictor module to provide classified clinical information (*claim 20*); and
c) combining said classified genetic information and said classified clinical information

into a predicted outcome (*claim 18*).

The subject-matter of claim 3 is therefore not new (**Article 54(1) and (2) EPC**).

3.3) Document *D1* discloses (*the references in parentheses applying to this document*):

A computer system to support a medical decision (*page 2, last paragraph*), comprising:

a processor (*claim 10, taking into consideration that a computer system inherently comprises a processor*); and

a memory device (*claim 10, taking into consideration that a computer system inherently comprises a memory device*) having classified gene expression information and classified clinical information (*claims 12, 13, and 16 and taking into account the classified data has to be stored inherently on the computer system during the processing*) stored thereon.

The subject-matter of claim 5 is therefore not new (**Article 54(1) and (2) EPC**).

3.4) Document *D1* discloses (*the references in parentheses applying to this document*):

A method for extracting relationship rules between sets of genes and clinical variables common for patients of a group substantially as herein described (*claims 15 and 18*).

The subject-matter of claim 7 is therefore not new (**Article 54(1) and (2) EPC**).

- 4) Dependent claims 2, 4, and 6 do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the EPC with respect to novelty (**Article 54(1) and (2) EPC**) or inventive step (**Article 56 EPC**). The subject-matter of these dependent claims either relates to features which are already known from the prior art or to obvious design options which come within the scope of the customary practice followed by persons skilled in the art. See particularly:

Claim 2

D1: claim 12 (taking into consideration that a computer system inherently comprises a monitor);

D3: page 35, lines 24 - 30.

Claim 4

D2: I. Introduction;

D4: Abstract.

Claim 6

D1: claim 18;

D3: page 9, line 19 - page 10, line 7; page 34, line 20 - page 35, line 9, and figure 7.

- 5) Should the applicant regard some particular matter as patentable, an independent claim should be filed taking account of **Rule 43(1) EPC**. The applicant should also indicate how the subject-matter of the new claim differs from the state of the art (*D1 - D4*) and the significance thereof.
- 5.1) When filing amended claims the applicant should at the same time bring the description into conformity with the amended claims. Care should be taken during revision, especially of the introductory portion and of any statements of problem or advantage, not to add subject-matter which extends beyond the content of the application as originally filed (**Article 123(2) EPC**).
- 5.2) In order to facilitate the examination of the conformity of the amended application with the requirements of **Article 123(2) EPC**, the applicant should clearly identify the amendments made, irrespective of whether they concern amendments by addition, replacement or deletion, and indicate the passages of the application as filed on which these amendments are based (**see Guidelines E-II, 1**).
- If the applicant considers it appropriate, these indications could be submitted in handwritten form on a copy of the relevant parts of the application as filed.